

1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division of Water

4 (Amended After Comments)

5 **401 KAR 5:320. Wastewater Laboratory Certification Program.**

6 RELATES TO: KRS 224.01-010, 224.10-100, 224.10-670, 224.70-100, 224.70-110, 40
7 C.F.R. 136, 33 U.S.C. 1342

8 STATUTORY AUTHORITY: KRS 224.10-670

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-670 authorizes the cabinet
10 to promulgate administrative regulations establishing standards for the operation of laboratories,
11 fees for certification and competency evaluation of those laboratories, issuance of certificates of
12 competency, and a certification program for laboratories that submit environmental data as it
13 relates to analyses and laboratory tests for activities subject to 33 U.S.C. 1342. This
14 administrative regulation establishes the wastewater laboratory certification program, standards
15 for the certification of wastewater laboratories, and fees for certification and evaluation of
16 wastewater laboratories.

17 Section 1. Definitions. (1) "Analysis category" means one (1) of the following analyte groups
18 for which an analysis can be performed by a wastewater laboratory:

19 (a) Inorganic general chemistry;

20 (b) Inorganic metals;

21 (c) Organic chemistry volatiles;

(d) Organic chemistry semi-volatiles;

(e) Organic chemistry pesticides, herbicides, or PCBs;

(f) Organic chemistry dioxins;

(g) Microbiology;

(h) Whole effluent toxicity; and

(i) Field analysis.

(2) “Certified” means that the cabinet has determined that the wastewater laboratory meets the regulatory performance criteria and the standard of quality established in this administrative regulation and has issued a certification.

(3) “Equivalency of certification” means certification of a wastewater laboratory by an entity, other than the cabinet, whose requirements for certification are determined by the cabinet to meet the requirements of this administrative regulation.

(4) “Field analysis” means a measuring of the following:

(a) Dissolved oxygen;

(b) Residual chlorine;

(c) pH;

(d) Temperature;

(e) Conductivity; **and**

(f) Turbidity[; ~~and~~

~~—(g) Flow].~~

(5) **“Field-only wastewater laboratory” means a wastewater laboratory that performs a measurement for only the parameters identified as field analysis. The measurement may take place outdoors, in an on-site room used as a laboratory, or in an off-site laboratory.**

(6) **“General wastewater laboratory” means a wastewater laboratory that performs an analysis for at least one analysis category other than field analysis, although the general wastewater laboratory analyses may also perform a field analysis measurement.**

(7)[(5)] “Interim certification” means a certification approved by the cabinet if it determines through documentation review that the wastewater laboratory meets the requirements of Section 10[8] of this administrative regulation. Interim certification is applicable to a method-analyte pairing until the cabinet has completed an **on-site** audit for that method-analyte pairing.

(8)[(6)] “Primary analyst or technician” means an analyst or technician who performs a specific method-analyte pairing analysis more often than any other analyst or technician at that wastewater laboratory.

(9)[(7)] “Wastewater laboratory” means a laboratory that performs an analysis, **measurement**, or laboratory test for an activity subject to 33 U.S.C. 1342.

Section 2. **Effective Date for this Administrative Regulation. The effective date for this administrative regulation shall be:**

(1) January 1, 2014, for a general wastewater laboratory; and

(2) January 1, 2015, for a field-only wastewater laboratory.

Section 3. Requirement for Acceptance of Environmental Data. (1) In accordance with KRS 224.10-670(2) **and the schedule in subsection (2) of this section**, [beginning July 1, 2014,] environmental data from analyses and laboratory tests submitted **to the cabinet** for activities subject to 33 U.S.C. 1342 shall be performed:

(a)[(1)] By a certified wastewater laboratory; and

(b)[(2)] In compliance with:

1 1. [(a)] An analytical method in 40 C.F.R. **Part** 136 or as established in the applicable
2 permit;

3 2. [(b)] This administrative regulation; and

4 3. [(e)] The provisions of the Commonwealth of Kentucky Wastewater Laboratory
5 Certification Manual.

6 **(2) The requirements in subsection (1) of this section shall begin on:**

7 **(a) January 1, 2015, for a general wastewater laboratory; and**

8 **(b) January 1, 2016, for a field-only wastewater laboratory.**

9 Section 4 [3]. Certification Requirements. The **requirements established in this section**
10 **shall** [~~following requirements~~] apply to a wastewater laboratory seeking certification.

11 (1) Application for certification shall be made on the Kentucky Wastewater Laboratory
12 Certification Program, Application for Kentucky Laboratory Certification, KWLCF Form App,
13 and shall include all information required by that form, and shall be submitted with the
14 applicable fee as established in Section 8 [6] of this administrative regulation as follows:

15 (a) If in paper form, to:

16 Kentucky Division of Water

17 Attn: Laboratory Certification

18 200 Fair Oaks Lane, 4th Floor

19 Frankfort, KY 40601; or

20 (b) If in electronic form, via the cabinet's Web site:

21 www.water.ky.gov.

22 (2) The wastewater laboratory shall apply for certification for each analysis category and for
23 each method-analyte pairing for which the wastewater laboratory intends to perform an analysis.

1 Section 5 [4]. Term of Certification Periods for a General Wastewater Laboratory. (1) The
2 initial [first] certification period for a general wastewater laboratory shall be from January 1,
3 2014 [July 1, 2013], until December 31, 2015 [2014], and subsequent certification periods shall
4 be consecutive two (2) year periods, beginning January 1, 2016 [2015].

5 (2) If, beginning January 1, 2016 [2015], a general wastewater laboratory applies for initial
6 certification of the wastewater laboratory or for certification for a new method-analyte pairing,
7 the initial certification period shall be the two (2) year period as established in subsection (1) of
8 this section, based upon the date of application receipt by the cabinet.

9 Section 6. Term of Certification Periods for a Field-Only Wastewater Laboratory. (1)
10 The initial certification period for a field-only wastewater laboratory shall be from January
11 1, 2015, until December 31, 2016, and subsequent certification periods shall be consecutive
12 two (2) year periods, beginning January 1, 2017.

13 (2) If, beginning January 1, 2017, a field-only wastewater laboratory applies for initial
14 certification of the wastewater laboratory or for certification for a new method-analyte
15 pairing, the initial certification period shall be the two (2) year period as established in
16 subsection (1) of this section, based upon the date of application receipt by the cabinet.

17 Section 7 [5]. Due Date for Certification Renewal Applications. (1) If an application, the
18 Kentucky Wastewater Laboratory Certification Program, Application for Kentucky Laboratory
19 Certification, KWLCF Form App, for certification renewal is received by the cabinet by
20 November 15 of the odd-numbered [even-numbered] year of the current certification period for
21 a general wastewater laboratory, or November 15 of the even-numbered year of the
22 current certification period for a field-only wastewater laboratory, the application shall be

1 considered timely submitted, and the wastewater laboratory's certification shall continue in
2 effect until the cabinet acts upon the application, unless the certification is otherwise revoked.

3 (2) If an application, the Kentucky Wastewater Laboratory Certification Program,
4 Application for Kentucky Laboratory Certification, KWLCP Form App, for certification renewal
5 is received by the cabinet after November 15 but on or before December 15 of the odd-
6 numbered [~~even-numbered~~] year of the current certification period for a general wastewater
7 laboratory, or after November 15 but on or before December 15 of the even-numbered year
8 of the current certification period for a field-only wastewater laboratory, the application
9 shall not be considered timely submitted, and shall be subject to the surcharge established in
10 Section 8 [6](4) of this administrative regulation. The wastewater laboratory's certification shall
11 continue in effect until the cabinet acts upon the application, unless the certification is otherwise
12 revoked.

13 (3) If an application, the Kentucky Wastewater Laboratory Certification Program,
14 Application for Kentucky Laboratory Certification, KWLCP Form App, for certification renewal
15 is received by the cabinet after December 15 of the odd-numbered [~~even-numbered~~] year of the
16 current certification period for a general wastewater laboratory, or after December 15 of the
17 even-numbered year of the current certification period for a field-only wastewater
18 laboratory, the application shall not be considered timely submitted, and shall be subject to the
19 surcharge established in Section 8 [6](5) of this administrative regulation. The wastewater
20 laboratory's certification shall expire after December 31 of that odd-numbered [~~even-~~
21 ~~numbered~~] year for a general wastewater laboratory, or after December 31 of that even-
22 numbered year for a field-only wastewater laboratory, and shall not be valid until the cabinet
23 acts upon the renewal application.

Section **8** [6]. Annual Certification Fees. (1) The annual certification fees for wastewater laboratory certification shall be established in Table 1 of subsection (2) of this section and shall include:

- (a) A nonrefundable administrative fee; and
- (b) A fee for each applicable analysis category.

(2) If a follow-up audit is performed to verify the correction of a deficiency identified by an audit pursuant to Section **10** [8] of this administrative regulation, an additional audit fee, established in Table 1, shall be assessed.

Table 1: Wastewater Laboratory Certification Fee

Fee Category	Annual Fee
Administrative Fee	\$1,000
Analysis Category Fee	
Inorganic general chemistry	\$500
Inorganic metals	\$500
Organic chemistry volatiles	\$500
Organic chemistry semi-volatiles	\$500
Organic chemistry pesticides, herbicides, PCBs	\$500
Organic chemistry dioxins	\$750
Microbiology	\$500
Whole effluent toxicity	\$1,000
Field analysis only	\$250
Follow-up Audit Fee	\$500

(3) The applicable certification fee shall be due by November 15 of each year. In **odd-numbered** [even-numbered] years of the certification period **for a general wastewater laboratory, or in even-numbered years of the certification period for a field-only wastewater laboratory**, the applicable certification fee shall be submitted concurrent with the

1 renewal certification application, the Kentucky Wastewater Laboratory Certification Program,
2 Application for Kentucky Laboratory Certification, KWLCF Form App.

3 (4)(a) If a fee is received by the cabinet after November 15 but on or before December 15,
4 the wastewater laboratory shall incur a surcharge of fifteen (15) percent of the applicable
5 certification fee (administrative fee plus analysis category fee).

6 (b) Payment of this surcharge shall be due thirty (30) days after notice is provided by the
7 cabinet.

8 (5) If a fee is received by the cabinet after December 15, the wastewater laboratory shall
9 incur a surcharge of twenty-five (25) percent of the applicable certification fee.

10 (a) The wastewater laboratory's certification shall expire after December 31 of that year and
11 shall not be valid until the applicable certification fee and the surcharge are received by the
12 cabinet.

13 (b) Payment of this fee and surcharge shall not reinstate certification for failure to timely
14 submit an application for certification renewal pursuant to the expiration established in Section 7
15 ~~[5]~~(3) of this administrative regulation.

16 (6) A wastewater laboratory seeking or obtaining equivalency of certification shall receive a
17 twenty (20) percent reduction of the certification fee.

18 (7) An in-state laboratory that is also certified for drinking water analysis, as established in
19 401 KAR 8:040, shall receive a twenty (20) percent reduction of the certification fee.

20 (8) A wastewater laboratory that provides only field analysis shall be exempt from the
21 annual administrative fee established in Table 1 of subsection (2) of this section.

22 (9) A wastewater laboratory operated by a facility that has been issued a Kentucky Pollutant
23 Discharge Elimination System permit and that is providing only field analysis for only its own

1 facility shall be exempt from all fees established in this administrative regulation.

2 (10) A wastewater laboratory operated by a municipality that provides analysis for only its
3 own facility shall receive the following reduction to the administrative fee established in Table 1
4 of subsection (2) of this section, based on its maximum permitted flow value:

5 (a) Less than or equal to 0.10 million gallons per day (MGD), a 100 percent reduction (no
6 administrative fee);

7 (b) Less than or equal to 0.50 MGD but greater than 0.10 MGD, a seventy-five (75) percent
8 reduction;

9 (c) Less than or equal to one and zero tenths (1.0) MGD but greater than zero and five
10 tenths (0.5) MGD, a fifty (50) percent reduction;

11 (d) Less than or equal to two and zero tenths (2.0) MGD but greater than one and zero
12 tenths (1.0) MGD, a twenty-five (25) percent reduction; and

13 (e) Greater than two and zero tenths (2.0) MGD, a ten (10) percent reduction.

14 (11) If more than one (1) reduction pursuant to subsections (6) through (10) of this section
15 applies, only the greatest reduction shall be taken.

16 Section 9 [7]. Interim Certification. (1) If a wastewater laboratory demonstrates that the
17 following requirements are met for a method-analyte pairing, the cabinet shall approve interim
18 certification for that method-analyte pairing:

19 (a) All information required by the Kentucky Wastewater Laboratory Certification Program,
20 Application for Kentucky Laboratory Certification, KWLCF Form App, shall be submitted to the
21 cabinet;

22 (b) The appropriate fee shall be submitted to the cabinet;

23 (c) A method, including instrumentation, established in 40 C.F.R. **Part** 136 or the

1 applicable permit shall be used; and

2 (d) A proficiency test study sample shall be analyzed by the primary analyst or technician
3 within the last year and the results shall be within the acceptance limits specified by a
4 proficiency test study provider approved by the American Association for Laboratory
5 Accreditation.

6 (2) A wastewater laboratory with interim certification may analyze samples for that method-
7 analyte pairing for compliance purposes.

8 Section **10** [8]. Audits. (1) A certified wastewater laboratory shall allow a cabinet auditor to
9 conduct, and shall participate in, an on-site audit during normal business hours [~~without prior~~
10 ~~notification~~].

11 (2) Wastewater laboratory certification records and supporting documentation shall be
12 retained for five (5) years or until the next on-site audit, whichever is longer.

13 (3) If the cabinet identifies a deficiency, the certified laboratory shall correct or otherwise
14 address the deficiency within thirty (30) days of receipt of notice of the deficiency.

15 (4)(a) If an on-site audit of a wastewater laboratory located outside of Kentucky is conducted
16 by the cabinet, the wastewater laboratory shall bear the **reasonable** cost of the audit.

17 (b) Payment shall be due thirty (30) days after notice of this cost is provided by the cabinet.

18 Section **11** [9]. Full Certification Requirements. (1) If, after an on-site audit and review of
19 submitted information, all requirements of this administrative regulation for a method-analyte
20 pairing have been met, the cabinet shall approve full certification for that method-analyte
21 pairing.

22 (2) To maintain full certification for the method-analyte pairing, the wastewater laboratory
23 shall:

1 (a) Maintain compliance with the requirements of this administrative regulation, based upon
2 the cabinet's review of requested documentation, on-site audit inspection, or both;

3 (b) Analyze a proficiency test study sample at least annually by the primary analyst or
4 technician and the results shall be within the acceptance limits specified by a proficiency test
5 study provider approved by the American Association for Laboratory Accreditation.^[5] **If the**
6 **wastewater laboratory fails a proficiency test study, the wastewater laboratory shall, within**
7 **ninety (90) days after receiving notice of the failed proficiency test study, analyze a second**
8 **proficiency test study with the results within the acceptance limits specified by an approved**
9 **proficiency test study provider;**

10 (c) Notify the cabinet within thirty (30) calendar days of a change in the personnel,
11 equipment, analytical method, or laboratory location identified in its application, Kentucky
12 Wastewater Laboratory Certification Program, Application for Kentucky Laboratory
13 Certification, KWLCP Form App;

14 (d) Submit documentation or data required by this administrative regulation; and

15 (e) Submit to the cabinet all fees by the deadlines established in this administrative
16 regulation.

17 Section **12** [40]. Provisional Certification. (1) The cabinet shall, when becoming aware of a
18 failure of a wastewater laboratory to comply with one (1) or more of the requirements
19 established in Section **11** [9](2) of this administrative regulation, provide written notice to the
20 wastewater laboratory of the deficiency and of the cabinet's intent to change the certification
21 status to provisional certification.

22 (2) If the deficiency relates to a specific method-analyte pairing, the cabinet may change the
23 status of the wastewater laboratory's certification to provisional certification. If the status is

1 changed to provisional certification, this changed status shall be for only the analyte that failed to
2 meet the requirements of Section **11** [9](2) of this administrative regulation, unless the cabinet
3 had certified a group of related analytes based on a limited number of analytes in the group.

4 (3) The wastewater laboratory shall submit to the cabinet a written corrective action plan to
5 address this deficiency within thirty (30) days of receipt of the notice of intent from the cabinet,
6 specifying the immediate and long-term corrective actions that shall be taken.

7 (4) The wastewater laboratory shall correct this deficiency as soon as reasonably possible.
8 If the deficiency is not corrected within thirty (30) days of receipt of the notice of intent, the
9 cabinet shall change the certification status to provisional certification, and shall provide written
10 notice to the wastewater laboratory of this action.

11 (5) A wastewater laboratory with provisional certification may continue to analyze a sample
12 for compliance purposes, but shall notify its client of the wastewater laboratory's provisional
13 certification status prior to conducting an analysis for that client and shall provide that
14 information in writing to the client.

15 (6) A wastewater laboratory with provisional certification shall correct the deficiency as
16 soon as is reasonably possible, but within three (3) months of written notification from the
17 cabinet of the change to provisional certification status.

18 (7) The cabinet shall restore the wastewater laboratory's provisional certification status to
19 full certification upon making a determination that the deficiency resulting in the provisional
20 certification status has been corrected and shall provide written notice to the wastewater
21 laboratory of this action.

22 Section **13** [11]. Certification Revocation. (1) The cabinet may immediately revoke a
23 wastewater laboratory's certification for any of the following reasons:

1 (a) Failure to use an analytical method established in 40 C.F.R. **Part** 136 or in the
2 applicable permit;

3 (b) Reporting proficiency test study data from another laboratory as its own data;

4 (c) Engaging in falsification of data or another deceptive practice;

5 (d) Endangering public health or the environment through an operation associated with the
6 wastewater laboratory;

7 (e) Refusal to allow or participate in an on-site audit conducted by the cabinet; or

8 (f) Persistent failure to report accurate compliance data to the cabinet.

9 (2) If the cabinet revokes a wastewater laboratory's certification pursuant to subsection (1)
10 of this section, the cabinet shall immediately notify the wastewater laboratory of this action and
11 provide written notice to the wastewater laboratory of this action.

12 (3) If a wastewater laboratory has not corrected the deficiency resulting in the provisional
13 certification status within three (3) months of written notification from the cabinet of the change
14 to provisional certification, the cabinet shall provide written notice to the wastewater laboratory
15 of the cabinet's intent to revoke the wastewater laboratory's certification for any method-analyte
16 pairing involved in the deficiency.

17 (4) The wastewater laboratory may request, in writing, a redetermination of the cabinet's
18 intent to revoke certification pursuant to subsection (3) of this section.

19 (a) If a redetermination is requested, the request shall be made within thirty (30) days of
20 receipt of the notice of intent to revoke.

21 (b)1. This request shall be submitted to the cabinet and shall explain the basis for the
22 redetermination request and, if appropriate, include a written corrective action plan to address the
23 deficiency identified in the cabinet's notice of intent to revoke.

2. The request shall be signed by a responsible official of the wastewater laboratory.

(5) The cabinet, having received a request for redetermination pursuant to subsection (4) of this section, shall make a final determination whether or not to continue provisional certification, approve certification, or revoke certification, and shall provide written notice to the wastewater laboratory of this action.

(6) If, within thirty (30) days of receipt of the notice of intent to revoke pursuant to subsection (3) of this section, the wastewater laboratory does not request a redetermination, the cabinet shall revoke the wastewater laboratory's certification and provide written notification to the wastewater laboratory of this action.

Section 14. Cabinet to Develop Templates. (1) The Cabinet shall develop templates to assist wastewater laboratories in preparing a quality assurance plan (QAP) and standard operating procedures (SOPs) applicable for field analysis measurements.

(2) The templates developed by the Cabinet shall address all applicable requirements for a QAP and common device SOPs, but will require the inclusion of site-specific information to be provided by the wastewater laboratory.

(3) The cabinet shall provide public notice and at least a thirty (30) day opportunity for public review and comment on the proposed templates before finalizing these templates.

(4) These templates may be used by a field-only wastewater laboratory or for the field analysis portion by a general wastewater laboratory. A wastewater laboratory is not required to use these templates, and may independently develop its own QAP and SOPs.

(5) The Cabinet shall make the final templates available on its web site.

Section **15** [42]. Incorporation by Reference. (1) The following material is incorporated by

1 reference:

2 (a) "Commonwealth of Kentucky Wastewater Laboratory Certification Manual", June
3 [~~March~~] 2013;

4 (b) "Kentucky Wastewater Laboratory Certification Program, Application for Kentucky
5 Laboratory Certification", KWLCF Form App, March 2013;

6 (c) "Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving
7 Waters to Freshwater Organisms", Fourth Edition, U.S.EPA-821-R-02-013, October 2002; and

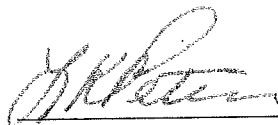
8 (d) "Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to
9 Freshwater and Marine Organisms", Fifth Edition U.S. EPA-821-R-02-012, October 2002.

10 (2) This material may be inspected, copied, or obtained, subject to applicable copyright law,
11 at the Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky, 40601, Monday through
12 Friday, 8 a.m. to 4:30 p.m. This material may also be obtained through the Division of Water's
13 Web site at <http://water.ky.gov>.

401 KAR 5:320 "Wastewater laboratory certification program." Approved for promulgation

6/13/13

Date



Leonard K. Peters, Secretary
Energy and Environment Cabinet

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 401 KAR 5:320

Contact Person: Jon Trout

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the wastewater laboratory certification program, standards for the certification of wastewater laboratories, and fees for certification and evaluation of wastewater laboratories.

(b) The necessity of this administrative regulation: KRS 224.10-670 authorizes the cabinet to promulgate administrative regulations to implement this statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 224.10-670 which requires the cabinet to consider national and state wastewater laboratory certification programs. The requirements reflect the already-applicable requirements in 40 C.F.R. Part 136 established by the U.S. Environmental Protection Agency.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the statute by providing the structure of a wastewater laboratory certification program and the specific criteria required for a wastewater laboratory to become certified. The statute requires that, one year after the effective date of this administrative regulation, water quality samples be analyzed by a wastewater laboratory that is certified by the cabinet for the resulting data to be deemed valid.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to approximately 97 municipal laboratories, 16 industrial laboratories, 110 commercial laboratories, and 59 field service laboratories.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: To continue to analyze wastewater samples for permit compliance purposes after one year after the effective date of this

administrative regulation, each laboratory will be required to submit an application, required laboratory and analysis information, and a fee and comply with the laboratory analysis requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost for each wastewater laboratory will vary, depending upon what types of analyses will be performed and other factors. The annual fee will range from \$0 (all fees are waived) for some small municipal laboratories to \$4,125 for full service laboratories. Because the required laboratory analysis protocols and documentation are already required by federal regulations, there should be no additional significant cost to comply with the substantive laboratory analysis requirements.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By statute, data from samples analyzed by an uncertified wastewater laboratory will be deemed invalid. Thus, obtaining certification will allow the wastewater laboratory to generate data from samples to be submitted for the purpose of demonstrating compliance.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The initial cost the Division of Water will be a maximum of approximately \$475,000 for the first year, comprised mostly of the salary for seven staff members.

(b) On a continuing basis: The continuing annual cost will remain approximately the same, a maximum of \$475,000 to retain the seven staff members.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The cost of implementing and enforcing this administrative regulation will be funded by fees assessed to the participating wastewater laboratories. Program fees were authorized by the statute.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The fees to fund the implementation and enforcement of this administrative regulation will be new fees assessed to the participating wastewater laboratories.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes fees to fund implementation and enforcement.

(9) TIERING: Is tiering applied? (Explain why or why not)

Yes, tiering is applied in this administrative regulation. Municipal wastewater laboratories that provide only service for their own facilities have a sliding-scale reduction in the administrative fee, from a 100% reduction (no fee) to a 10% reduction, based upon the permitted maximum permitted flow value. Wastewater laboratories pay an analysis category fee for only the analysis categories for which they seek certification.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation #: 401 KAR 5:320

Contact Person: Jon Trout, RPPS Branch Manager
502 564-3410

1. **What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?**

Municipalities that operate a wastewater treatment plant and perform their own wastewater laboratory analyses would be impacted by this administrative regulation if they choose to continue to operate their wastewater laboratory. It is anticipated that this will affect approximately 97 municipal wastewater laboratories.

2. **Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.**

The substantive requirements for wastewater laboratory analyses are federal regulations in 40 C.F.R. Part 136. KRS 224.10-670 establishes statutory authority for the cabinet to promulgate this administrative regulation.

3. **Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.**

- a. **How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?**

Implementation of the fee portion of this administrative regulation during the first year, will generate approximately \$432,000 to \$475,000, depending upon how many of the existing wastewater laboratories decide to become certified.

- b. **How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?**

Implementation of the fee portion of this administrative regulation during subsequent years, will generate approximately \$432,000 to \$475,000, depending upon how many of the existing wastewater laboratories decide to become certified.

- c. **How much will it cost to administer this program for the first year?**

It is estimated that the first year cost to administer this program will be a maximum of \$475,000.

- d. **How much will it cost to administer this program for subsequent years?**

It is estimated that the cost to administer this program for subsequent years will be a maximum of \$475,000

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-)

Expenditures (+/-)

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation #: 401 KAR 5:320

Contact Person: Jon Trout, RPPS Branch Manager

1. Federal statute or regulation constituting the federal mandate.

Although the substantive requirements for wastewater laboratory analyses are federal regulations in 40 C.F.R. Part 136, these regulations do not require the states to develop and implement a wastewater laboratory certification program.

2. State compliance standards.

KRS 224.10-670 establishes statutory authority for the cabinet to promulgate this administrative regulation. The substantive requirements from 40 C.F.R. Part 136, along with the certification program and fees, are included in 401 KAR 5:320.

3. Minimum or uniform standards contained in the federal mandate.

Wastewater laboratory analyses, for the purpose of demonstrating compliance for activities subject to 33 U.S.C. 1342, are required to meet the analytical methods, including instrumentation, required by 40 C.F.R. Part 136.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate?

The substantive wastewater laboratory analysis requirements are the same as those in 40 C.F.R. Part 136. 401 KAR 5:320 adds to those the requirements for becoming certified by Kentucky and an administrative fee. These provisions are established pursuant to statutory authority in KRS 224.10-670.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

The certification requirements and fee provisions of 401 KRS 224.10-670 are established pursuant to statutory authority in KRS 224.10-670.

**DETAILED SUMMARY OF MATERIAL
INCORPORATED BY REFERENCE
IN 401 KAR 5:320**

- (1) This administrative regulation incorporates by reference “Commonwealth of Kentucky Wastewater Laboratory Certification Manual”, June 2013. This manual provides guidance on meeting the laboratory requirements of 401 KAR 5:320.

This document consists of 68 pages.

- (2) This administrative regulation incorporates by reference “Kentucky Wastewater Laboratory Certification Program, Application for Kentucky Laboratory Certification”, KWLCF Form App, June 2013. This application form is required to be used to apply for wastewater laboratory certification.

This document consists of 12 pages.

- (3) This administrative regulation incorporates by reference “Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms”, Fourth Edition, U.S.EPA-821-R-02-013, October 2002. This manual is referenced in “Commonwealth of Kentucky Wastewater Laboratory Certification Manual”, March 2013. This manual describes chronic toxicity tests for use in the National Pollutant Discharge Elimination System (NPDES) Permits Program to identify effluents and receiving waters containing toxic materials in chronically toxic concentrations. The methods included in this manual are referenced in Table IA, 40 CFR Part 136 regulations and, therefore, constitute approved methods for chronic toxicity tests. They are also suitable for determining the toxicity of specific compounds contained in discharges. The tests may be conducted in a central laboratory or on-site, by the regulatory agency or the permittee.

This document consists of 350 pages.

- (4) This administrative regulation incorporates by reference “Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms”, Fifth Edition U.S. EPA-821-R-02-012, October 2002. This document is referenced in “Commonwealth of Kentucky Wastewater Laboratory Certification Manual”, March 2013. This manual describes acute toxicity tests for use in the National Pollutant Discharge Elimination System (NPDES) Permits Program to identify effluents and receiving waters containing toxic materials in acutely toxic concentrations. With the exception of the *Holmesimysis costata* Acute Test (Table 19), the methods included in this manual are referenced in Table IA, 40 CFR Part 136 regulations and, therefore, constitute approved methods for acute toxicity tests. They are also suitable for determining the toxicity of specific compounds contained in discharges. The tests may be conducted in a central laboratory or on-site, by the regulatory agency or the permittee.

This document consists of 275 pages.